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September 21, 2007

The Honorable Joseph J. Farnan, Jr.  
United States District Court  
For the Eastern District of Delaware  
844 North King Street  
Wilmington, DE 19801

*VIA ELECTRONIC FILING*

Re: *Affymetrix, Inc. v. Illumina Inc.*  
C.A. No. 04-CV-901 JJF

Dear Judge Farnan:

On September 13, 2007, Illumina filed its Motion to Vacate as a Matter of Law the Jury's Verdict of Infringement Under the Doctrine of Equivalents on the Basis of Prosecution History Estoppel. (D.I. 444). The parties had previously stipulated (D.I. 433) that post-trial JMOL motions would be addressed at the appropriate time as established by the Court. Affymetrix believes that Illumina's motion should be addressed at the time the other post-trial motions are addressed. Thus, Affymetrix asks that the schedule for briefing of motions be discussed at the October 10 conference and that the Court enter the attached Order postponing the time for Affymetrix to respond pending that discussion.

Additionally, in advance of the October 10 conference, Affymetrix also asks the Court to consider its pending motion (D.I. 272) regarding assignor estoppel. A ruling in Affymetrix's favor on this motion would streamline the upcoming Phase II trial.

Respectfully,

  
Maryellen Noreika

MN/db

Enclosure

cc: Clerk of Court (Via Hand Delivery; w/ encl.)  
Richard K. Herrmann, Esquire (Via Electronic Mail and Hand Delivery; w/ encl.)  
Marcus E. Sernel, Esquire (Via Electronic Mail; w/ encl.)